IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/06/2002

CORAM

THE HON'BLE MR.JUSTICE A.K.RAJAN

Criminal Appeal No.312 of 1988 and Criminal Appeal No. 820 of 1991

Criminal Appeal NO. 312 of 1988

Gomathi alias Anandhi ... Appellant

Vs.

1. Padma
2. Balasubramanian Pillai
3. Parvathi
4. Rathnammal
5. Muniammal
6. Chockalingam
7. Kumaresan .. Respondents

Crl. Appeal No. 820 of 1991

B.Sukumaran .. Appellant

Vs.

Gomathi @
Anandhi .. Respondent

Appeals filed against the Judgment of the Judicial Magistrate
(I) Tirunelveli made in C.C.No. 120/1987 dated 10.3.1988.

!For Appellant: Mr.R.S.Ramanathan for
Mr.P.N.Radhakrishnan (For
appellant in C.A.No.31 2/88
and for Respondent in C.A.820/91

^For Respondents: Mr. K.S. Ramachandran
for Appellant in C.A.No.820/91
and for respondents in C.A.312/88

:JUDGMENT

Appeals against Conviction .

2. The case of the prosecution is that A1 married P.W.1 Gomathi alias Anandhi on 26.1.1986, Palayamkottai. When that marriage was in force, A1 married A2 on 26.1.1986 at Paramakudi at the house of A7. Therefore A1 and A2 were guilty of the offence punishable under Section 494 I.P.C. The other accused 3 to 8 are relatives of the first and second accused who were responsible for performance of the marriage between A1 and A2 and therefore A3 to A8 were charged for offence under Section 494 read with 109 IPC. A3 and A4 are the parents of A1. A5 is the first wife of A3. A6 is the elder sister of A2 . A7 is the husband of A6. A8 is the brother of A1. After the trial, the trial Court acquitted A2 to A8 but convicted A1 for offence under Section 4 94, against which the appeal in C.A. 820 of 1991 has been filed. Against the acquittal of A2 to A8 , the complainant has preferred appeal in C.A.No.312 of 1988.

3. Learned counsel for the appellant/ accused submitted that there is no acceptable evidence to convict A1 and that to prove that the marriage between first and second accused was to be a valid Hindu marriage, the ceremonies like Homam, Saptapadi and Kannigathanam are necessarily to be performed. In the absence of any evidence to prove that there was performance of Homo and Saptapadi, the Court cannot come to a conclusion that there was a valid Hindu marriage, between A1 and A2 . In support of his contention, learned counsel for the appellant placed reliance on the judgment of the Apex Court in KANWAL RAM AND OTHERS VS. THE HIMACHAL PRADESH ADMINSTRATION (AIR 196 6 SC 614), wherein the Apex Court has held that in a bigamy case, the second marriage as a fact, that is to say, the essential ceremonies constituting it, must be proved.

4. Learned counsel for the appellant/ accused also relied upon another decision of the Supreme Court in PRIYA BALA GHOSH VS. SURESH CHANDRA GHOSH (1971 SCC (Cri) 362), wherein the Supreme Court has held that under Section 17 of the Hindu Marriage Act, a marriage to be valid , homo and Sapatapadi should be performed which are essential ceremonies. It has been held thus:

(i) It is clear that if the alleged second marriage is not a vlid one according to law applicable to the parties, it will not be void by reason of its taking place during the life of the husband or the wife of the person marrying so as to attract Section 494, I.P.C.
Again in order to hold that the second marriage has been solemnised so as to attract Section 17of the Act, it is essential that the second marriage should have been celebrated with proper ceremonies and in due form.
(ii) The prosecution has to prove that the alleged second marriage had been duly performed in accordance with the essential religious rites applicable to the form of marriage gone through by the parties and that the said marriage must be a valid one according to law applicable to the parties.

5. Learned counsel for the appellant/ accused also relied on the decision of the Supreme Court in respect of the same proposition in SANTI DEB BERMA VS. KANCHAN PRAVA DEVI (1992 (SCC)(Cri) 65) wherein it has been held that the proof of e of essential ceremonies of a valid marriage cannot be deduced from letters or oral evidence of the accused and second wife living as husband and wife. He also relied upon another judgment in LAXMI DEVI VS. SATYA NARAYAN AND OTHERS (1994 SCC (Cri) 1566), wherein the Apex Court has held that in the absence of proof of Saptapadi the factum of second marriage

cannot be said to have been proved.
6. Learned counsel for the respondent/ complainant brought to the notice of this Court a latest decision of the Apex Court in S. NAGALINGAM VS.SIVAGAMI (2001 (7) SCC 487), wherein the Supreme Court has held that Saptapadi is an essential ceremony for a valid marriage only in cases, where it is admitted by the parties entering into the marriage that it is an essential ritual to be performed for the marriage as per the personal law or form of marriage applicable to them. Section 7-A of the Hindu Marriage Act, 1955 as inserted by the Hindu Marriage (Tamil Nadu Amendment)Act, 1967 validates the marriage performed between the parties concerned by garlanding each other or putting a ring or tying a thali. Therefore, the second marriage between the appellant/accused with A2 without ceremony of saptapadi was a valid marriage, under Section 7-A of the Act so as to constitute an offence under Section 494 IPC. Therefore, the counsel for the respondent / complainant contended that in the absence of any evidence that saptapadi is one of the important rituals, the non-performance of saptapadi or homam does not invalidate a valid marriage.
7. From the the decision of the Supreme Court in S.NAGALINGAM VS.SIVAGAMI (2001 (7) SCC 487), the doubt, if any, has been cleared by the Supreme Court. In so far as Tamil Nadu is concerned, the tying of thali or exchange of ring or exchange of garlands is sufficient to constitute a valid Hindu marriage. The performance of Sapthapadi or the performance of homa are not essential ceremonies within Tamil Nadu. Sapthapadi and / or Homam are not sine–qua-non to constitute a valid Hindu marriage celebrated within Tamil Nadu. Therefore, in a Hindu marriage performed within Tamil Nadu, tying of thali or exchange of garland or ring, if proved, is sufficient to hold that there was a valid marriage unless there is sufficient evidence to prove that the form of marriage performed by them requires performance of Homam and Sapthapadi.
8. P.W.1 has stated that she was married to A1 on 26.6.1980, according to Hindu rites at Palayamkottai. Subsequently, they were residing at Uthamapalayam and a male child was born on 4.9.1981. After she came to her parents house for delivery, A1 did not take her back to matrimonial home. A1 was demanding Rs.50,000/- and he threatened PW1 that unless and until the amount was not paid he would not take her back . Subsequently, a petition was filed for divorce before the Sub Court Madurai. On 16.2.1985 that petition was dismissed. Thereafter A1 married A2 on 26.1.1986 in the house of A7. PW1 has also stated that a child was also born to A1 and A2. She came to know about the second marriage only during January 1987.
9. In the cross-examination, she has stated that the marriage between PW1 and A1 was performed by prohit. She has also stated in the cross-examination the ceremonies that were performed during marriage. She has also stated that A1 tied thali to her i.e., traditional yellow thread. She has also spoken in detail as to the ceremonies performed by the prohit. Even otherwise, being the first marriage, it is presumed to be a valid marriage. The mere fact that A1 filed an application for divorce will also prove that there was a valid marriage between PW1 and A1.
10. PW2 in his evidence has stated that on 26.1.1986, between 5 am and 6 am A1 married A2 in the house of A7 at Paramakudi. He also stated that a prohit performed the marriage and A1 tied thali to A2 and also they exchanged garlands. PW3 has stated that he also attended and witnessed the

marriage on 26.1.1986 between A1 and A2. He also speaks about the performance of marriage by Prohit. He also stated that A1 tied thali to A2. PW2 and PW3 are independent witnesses. There is not even any suggestion of enmity between A1 and Pws 2 and 3 ; or they speak falsely. Therefore their evidence is acceptable. When questioned under Section 313 Cr.P.C, A1 simply denied the accusation. There is no evidence on record to hold that the form of marriage performed required performance of Sapthapadi or Homam. Under the circumstances, in the absence of any ground to disbelieve the evidence of PW2 and PW3, the Court cannot disbelieve their evidence. On the basis of evidence on record, the lower Court has rightly concluded that the second marriage between A1 and A2 has been proved. Therefore, the lower Court has rightly found A1 guilty of the offence under Section 494.

11. In so far as the accused A3 to A8 are concerned, who are the relatives of A1 and A2, the lower Court has acquitted them. There is no reason to interfere with the judgment of the lower Court, though the appeal against the acquittal has been filed. The lower Court has given clear reasoning that there was no evidence that the other accused A2, A6 to A8, who are related to A2 were aware of the factum of the first marriage between A1 and PW1. In so far as A3 to A5 are concerned there is no sufficient evidence except their being present. That finding is plausible from the evidence on record. Therefore such a finding cannot be interfered in an appeal against acquittal and hence in so far as the acquittal of A2 to A8 by the lower Court is concerned, it is confirmed and the appeal against their acquittal is dismissed.

12. From the evidence on record the lower Court has come to the right conclusion that the second marriage between A1 and A2 has been proved and therefore found A1 guilty under Section 494 of IPC. There is no reason to disturb that conclusion. Hence the appeal against conviction is also dismissed. The judgment of the trial Court is confirmed.

24.6.2002

Index:Yes
Website:Yes
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To
1. The Additional Sessions Judge,
Tiruneveli
through the Principal Sessions Judge,
Tirunelveli.
2. The Chief Judicial Magistrate, Tirunelveli
3. The Sessions Judge, Tirunelveli
through the Principal Sessions Judge,
Tirunelveli.
4. The Collector, Tirunelveli District.

A.K.RAJAN,J.
Crl.Appeal No.312 of 1988
Crl.Appeal No. 820 of 1991.